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SENATE BILL 3138 By
Kyle

HOUSE BILL 3002
By Eckles

AN ACT to amend Tennessee Code Annotated, Title 4, Chapters 3 and 29, and Title 33, relative to the department of mental health and mental retardation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 3, is amended by deleting Part 16 in its entirety.

SECTION 2. Tennessee Code Annotated, Section 4-29-219(a), is amended by deleting item (25) in its entirety.

SECTION 3. Tennessee Code Annotated, Section 4-29-219(a), is further amended by deleting item (26) in its entirety.

SECTION 4. Tennessee Code Annotated, Section 4-29-221(a), is amended by adding a new item thereto, as follows:

() Mental health and mental retardation authority, created by Section 7 of this act;

SECTION 5. Tennessee Code Annotated, Title 33, is amended by deleting part 1 of chapter 1 in its entirety and by adding Sections 6 through 12 of this act as new part 1.

SECTION 6. As used in this title, unless the context otherwise requires:

(1) "Alcohol abuse" means a condition characterized by the continuous or episodic use of alcohol resulting in social impairment, vocational impairment, psychological dependence or pathological patterns of use;

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(2) "Alcoholism" means alcohol abuse which results in the development of tolerance or manifestations of alcohol abstinence syndrome upon cessation of use;

(3) "Authority" means the mental health and mental retardation authority;

(4) "Commissioner" means the commissioner of the authority;

(5) "Community mental health agency" means a private entity qualified as a tax exempt organization under Internal Revenue Code 501(c)(3) or a public entity created by private act of the general assembly which was a grantee of the authority for fiscal year 1995-1996. If any such entity underwent a corporate name change or corporate restructuring since July 1, 1995, then the successor or surviving corporation shall be deemed to be a "community mental health agency", for purposes of this definition; and

(6) "Community mental health center" means a private entity qualified as a tax exempt organization under Internal Revenue Code 501(c)(3) or a public entity created by private act of the general assembly; provided, that prior to July 1, 1992, such entity must have been an approved provider in Tennessee under the Medicaid Clinic Option and a grantee of the authority. If any such entity underwent a corporate name change or corporate restructuring since July 1, 1992, then the successor or surviving corporation shall be deemed to be a community mental health center for purposes of this definition.

(7) "County of residence" means that county in which the individual has resided continuously for as long as sixty (60) days immediately prior to that individual's hospitalization or admission;

(8) "Developmental center" means a public or private institution or part thereof, within the state of Tennessee, equipped to provide inpatient care and treatment including training, for the mentally retarded, or any similarly equipped institution under the supervision of the authority;

(9) "Drug abuse" means a condition characterized by the continuous or episodic use of a drug or drugs resulting in social impairment, vocational impairment, psychological dependence or pathological patterns of use;

(10) "Drug dependence" means drug abuse which results in the development of tolerance or manifestations of drug abstinence syndrome upon cessation of use;

(11) "Hospital" means a public or private hospital or institution, or part thereof, within the state of Tennessee, equipped to provide inpatient care and treatment for the mentally ill, or any similarly equipped state hospital under the supervision of the authority;

(12) "Indigent person" means a person whose property or estate is insufficient to pay any part of the person's maintenance in a state institution for the mentally ill or mentally retarded, and who does not have any responsible relatives able to pay for any part of the person's maintenance;

(13) "Licensed physician" means a graduate of an accredited medical school authorized to confer upon graduates the degree of Doctor of Medicine (M.D.) who is duly licensed in Tennessee, or an osteopathic physician who is a graduate of a recognized osteopathic college authorized to confer the degree of Doctor of Osteopathy (D.O.) and who is licensed to practice osteopathic medicine in Tennessee;

(14) "Licensed psychologist" means an individual licensed as a psychologist under the laws of Tennessee;

(15) "Maintenance" includes the cost of all institutional and professional services received by a patient or resident;

(16) "Mentally ill individual" means an individual who suffers from a psychiatric disorder, alcoholism, or drug dependence, but excluding an individual whose only mental disability is mental retardation;

(17) "Mentally retarded individual or mentally deficient individual" means an individual who has significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, and manifested during the developmental period;

(18) "Patient" means an individual under evaluation, care or treatment in a psychiatric hospital, mental health center, or other facility for the mentally ill;

(19) "Resident" means an individual under evaluation, care, training, or treatment in a developmental center or other facility for the mentally retarded;

(20) "Resident of Tennessee" means an individual who has lived continuously in Tennessee for a period of sixty (60) days and who has not acquired residence in another state by living continuously therein for at least sixty (60) days subsequent to residing in Tennessee. Time spent in a public institution for the care of the mentally ill or for the mentally retarded or on leave of absence therefrom shall not be counted in determining the question of residence in Tennessee or in another state;

(21) "Responsible relatives" means the spouse, if there be such, of the mentally ill patients receiving care and service in mental health programs under the jurisdiction of the authority, and the parent or parents of unmarried mentally ill patients or mentally retarded residents who have not attained the age of eighteen (18) and are receiving care and service in mental health programs of the authority, or any relative who declares himself to be financially responsible for the care and service of a mentally ill patient or mentally retarded resident. Any financial responsibility incurred prior to April 30, 1973 which would not be a financial responsibility under the terms of this item is abrogated to the extent that such responsibility is subject to any pending claim by the state that remains unsatisfied on April 30, 1973;

(22) "Superintendent" means the individual in charge of a public or private hospital or developmental center or treatment resource, or the individual's designee;

(23) "Treatment resource" means any public or private facility, service, or program providing treatment or rehabilitation services for mental illnesses including, but not limited to, detoxification centers, licensed hospitals, community mental health centers, clinics or programs, halfway houses, and rehabilitation centers;

SECTION 7. For the better treatment and welfare of the mentally ill and mentally retarded in this state, there is created the mental health and mental retardation authority, which shall be governed by the general assembly.

SECTION 8. (a) The commissioner of the authority shall be appointed by joint vote of the general assembly.

(b) The commissioner shall serve for a term of four (4) years. The initial term of the commissioner appointed pursuant to this act shall be two (2) years. A commissioner may be reappointed by the general assembly.

(c) The authority is under the charge and general supervision of the commissioner of the mental health and mental retardation authority.

(d) The commissioner's compensation shall be set by the general assembly.

(e) The general assembly may remove the commissioner for cause.

SECTION 9. (a) The commissioner shall be appointed without regard to residence on the basis of merit as measured by administrative abilities and a demonstrated quality of leadership, and must hold a recognized graduate degree as a psychiatrist, doctor of medicine, behavioral scientist, social scientist, educator or other profession involved with human development, human welfare or human relations (with experience in public administration); and shall further have a professional background in the areas of mental illness or mental retardation, and an understanding of the conditions of mental health, human development, mental retardation, human welfare and social services.

(b) No person shall be eligible to appointment as commissioner unless such person is at least thirty (30) years of age and has five (5) years of administrative experience, including at least three (3) years of full-time management experience in private enterprise, private practice or public service.

SECTION 10. (a) The authority has exclusive jurisdiction and control over the mental health facilities and institutions of the state, including Lakeshore Mental Health Institute, Middle Tennessee Mental Health Institute, Western Mental Health Institute, Moccasin Bend Mental Health Institute, Memphis Mental Health Institute, Greene Valley Developmental Center, Clover

Bottom Developmental Center and Arlington Developmental Center, regardless of the names by which these institutions are known.

(b) The authority, through its appropriate officials, has the duty and power to provide the best possible care for the mentally ill and mentally retarded in the state by improving existing facilities and institutions, by the development of future facilities and institutions and by the adoption of a preventive program for mental illness.

SECTION 11. (a) The commissioner shall conduct public hearings at least four (4) times each year to receive testimony from the public regarding the delivery of services to the mentally ill and mentally retarded in the state.

(b) Notice of the time and place of the public hearing shall be published in at least one (1) newspaper of general circulation in each of the state's major metropolitan areas ten (10) days before the hearing. The commissioner is encouraged to also purchase publication of such notices within newspapers within African American communities within Nashville, Memphis, rural west Tennessee, Knoxville and Chattanooga.

SECTION 12. The commissioner shall prepare an annual report on the delivery of mental health and mental retardation services to be delivered to each member of the general assembly by February 1 of each year.

SECTION 13. Tennessee Code Annotated, Title 33, is amended by deleting part 2 of chapter 1 in its entirety and by adding Sections 13 through 22 of this act as new part 2.

SECTION 14. (a) The authority, through its commissioner, is empowered to enter into, with the approval of the fiscal review committee, contractual agreements with institutions and individuals in furtherance of its function of treatment, personnel training, research and education.

(b) The authority through its commissioner shall also have power to accept grants and gifts of funds, from whatever source derived, to administer the same according to the terms of such grants and/or gifts and to enter cooperative programs with private and public

instrumentalities, including the federal government, for the betterment of facilities and for the general improvement of the mental health of the state.

(c) The authority, through its commissioner and with the approval of the fiscal review committee, shall have the power to enter into contractual agreements with other states, or political subdivisions thereof, or corporations chartered in such other states, for the purpose of providing preventive and treatment services for the mentally ill by establishing or supporting various mental health facilities in cooperation with such political or corporate bodies.

(d) The authority, through its commissioner and with the approval of the fiscal review committee, shall have the power to enter contractual agreements with counties, or agencies thereof, of the state for the inpatient treatment of psychiatric patients or residents.

(e) The authority of finance and administration shall furnish to the authority space for such offices in state buildings as such authority shall need to efficiently carry out the duties imposed on it by law.

SECTION 15. (a) The authority, through its commissioner and with the approval of the fiscal review committee, is authorized within the limits of its appropriations to:

(1) Make grants under such terms and conditions as the commissioner, with the approval of the commissioner of finance and administration and the comptroller of the treasury, may prescribe to any county or city or nonprofit corporation or any combination of them and enter into cooperative programs for the construction, maintenance or operation of mental health or mental retardation facilities, programs or services to provide care, rehabilitation and treatment for the mentally ill or mentally retarded and promulgate and enforce rules that are necessary for the efficient financial management and lawful operation of such facilities, programs or services; or

(2) Construct, maintain and operate such facilities, programs or services.

(b) (1) Each governing body of such facility, program, or service shall cause an annual audit to be made of its accounts and records. The comptroller of the treasury, through the

authority of audit, shall be responsible for ensuring that the audits are prepared in accordance with generally accepted governmental auditing standards and determining if the audits meet minimum audit standards which shall be prescribed by the comptroller. No audit may be accepted as meeting the requirements of this subsection until such audit has been approved by the comptroller. The audits may be prepared by the authority of audit, or with the prior written approval of the comptroller, by a licensed independent public accountant.

(2) All audits performed by the internal audit staff of any such facility, program, or service shall be conducted in conformity with the standards established by the comptroller of the treasury under § 4-3-304(9).

(c)(1) If a grantee, licensed by the authority as a mental retardation agency, providing services to mentally retarded clients, determines that a client should no longer be served by the grantee's program, the client shall be given an opportunity for a fair hearing before the grantee's governing body or a designated committee of such governing body.

(2) If the client is dissatisfied with the results of the hearing, the client may request a hearing before a state hearing officer to be conducted in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(3) The hearing officer may approve the discontinuance of services if such officer finds that:

(A) The client's participation in the program is dangerous to the client or others;

(B) The client is inappropriately served by the program and a more appropriate program is available within a reasonable distance; or

(C) Discontinuance of services is necessary because of a loss of funds.

SECTION 16. The commissioner has the following powers and duties, in addition to such other powers and duties as may be specifically provided by law in this chapter or elsewhere, to:

(1) Select and recommend to the appropriate state officials the employment of the superintendents of all institutions of the authority, all central office personnel, including an administrative assistant, and all professional, technical and other personnel required for the operation of the authority;

(2) Recommend to the appropriate state officials the salaries and compensation of all officers and employees of the authority;

(3) Make and adopt rules and regulations, in accordance herewith, for the government, management, and supervision of each and all state mental health facilities; prescribe the powers and duties of the officers and employees thereof; regulate the admission of the patients or residents thereto, in accordance herewith; and provide for the care, maintenance and treatment of the patients and residents therein;

(4) Publish, in accordance with the rules, regulations, policies and procedures of the state publications committee, a report on the operation of the authority and the institutions and programs under its supervision; to furnish such report to the fiscal review committee and members of the general assembly; and to make such further distribution of the report as the commissioner, with the approval of the fiscal review committee, may consider proper;

(5) Prescribe, prepare, and have printed and distributed the proper forms to be used in connection with the admission, hospitalization or release of patients or residents in the state mental health facilities;

(6) Make such alterations in the facilities themselves, and in the grounds attached, as may be necessary to ensure such a distribution of patients or residents as considered essential to their proper treatment and well-being;

(7) Place such patients or residents as may be benefited by it, in the opinion of the superintendents, during the period of the patients' or residents' treatment and for the purpose of therapy at such employments as will tend to their restoration;

(8) Make all necessary provision to ensure to patients or residents such means of bodily exercise and of amusement and recreation as constitute a proper part of the treatment of such patient or resident;

(9) Order the transfer of patients or residents from any one (1) of the state mental health facilities to another; and

(10) Assume general responsibility for the proper and efficient operation of the authority, its institutions and programs.

SECTION 17. (a) The commissioner may make and promulgate rules and regulations for the conduct of the institutions under the commissioner's authority covering, but not limited to, the admission and discharge of patients or residents.

(b) It shall be the duty of the commissioner to actively supervise and oversee policies and methods of treatment in use in each institution under the commissioner's jurisdiction and to formulate policies to be followed in connection therewith, which policies shall comprehend so far as possible the most modern methods in the treatment of the mentally ill and the commissioner shall do all things necessary so far as possible to improve the standards of all institutions under the commissioner's jurisdiction, both present and future.

(c) The commissioner, with the approval of the fiscal review committee, shall be authorized to enter into contracts or agreements with guardians or parents, or any person or persons legally entitled to act on behalf of mentally ill patients or mentally retarded residents, or licensed and approved privately operated nursing homes, or with the county executive of any county within the state with the view of utilizing licensed and approved privately operated nursing homes for the care of mentally ill patients or mentally retarded residents in order to prevent or alleviate overcrowding of state-operated institutions with patients or residents of the type and condition who can be provided with adequate care, supervision and treatment in private nursing homes licensed by the authority of health and approved for this purpose by the authority; provided, however, no such contracts or commitments may be entered into

committing the authority or the state for the expenditure of any funds beyond those available to such authority by appropriation of the general assembly.

SECTION 18. (a) The commissioner has the authority to establish, with the approval of the fiscal review committee and the advice of the advisory board, hospital or developmental center districts and to specify the state mental health facility to which residents of a particular county shall be admitted.

(b) The commissioner is further empowered to:

(1) Prescribe the form of applications, records, reports and medical certificates provided for in this chapter and the information that such forms shall contain;

(2) Require reports from the superintendent of any mental health facility relating to the admission, examination, diagnosis, release or discharge of any patient or resident;

(3) Visit any such mental health facility regularly to review hospitalization or admission procedures;

(4) Investigate by personal visit complaints made by any patient or by any person on behalf of a patient or resident; and

(5) To promulgate such rules and regulations not inconsistent with the provisions of this chapter reasonably necessary for the proper and efficient hospitalization and treatment of the mentally ill and mentally retarded.

SECTION 19. The commissioner may designate employees of the authority as administrative law judges or hearing officers to conduct contested case hearings when such cases are required to be held under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for admission review hearings for admission to authority facilities.

SECTION 20. (a) Within the authority, there is hereby established the position of liaison coordinator for supportive living facilities.

(b) Such individual shall be responsible for interagency coordination, information gathering, communication, training and education, evaluation, assessment of needs, review of policies, resources and problems as they affect supportive living facilities.

SECTION 21. (a) The authority shall identify individuals suffering from severe disabling mental illness and classify them into clinically related groups as defined by the Annual Plan for a Comprehensive System of Mental Health Services in Tennessee, 1993-1994. Persons so designated are referred to as the priority population.

(b) The authority shall specify the continuum of mental health services to be made available to each individual in the priority population. The continuum of services may include inpatient care in a state mental health institute or in a private hospital, intensive case management, continuous treatment teams, medication and medication monitoring, psychosocial rehabilitation programs, supported employment coaches, drop-in centers, support for family and consumer groups, telephone warm lines, crisis service programs, available respite beds, discretionary funds for independent living support, and supervised group homes. Each of these services is defined by the Annual Plan for a Comprehensive System of Mental Health Services in Tennessee, 1993-1994.

(c) The authority will set standards for these services, monitor the services provided and rate providers as satisfactory or unsatisfactory based on outcomes for the priority population.

(d) The state of Tennessee will provide funding to assure that the specified continuum of services is made available to each individual in the priority population by providers with satisfactory outcome ratings. Consistent with applicable eligibility requirements, the state may provide the funding for such services through the Medicaid program or any waiver granted under the Medicaid program, specifically including TennCare.

SECTION 22. (a) To help the authority determine the suitability of a person for volunteer services or employment and verify the accuracy of information submitted in support of an application to work for the authority, any person who applies to work for the authority as an

employee, or any volunteer, whose function would include direct contact with or direct responsibility for persons with mental illness or developmental disabilities must:

(1) Agree to the release of all investigative records about the person from any source, including federal, state and local governments; and

(2) Supply a fingerprint sample for the conduct of a criminal background investigation by the Tennessee bureau of investigation. If no disqualifying record is identified, the bureau shall send the fingerprints to the federal bureau of investigation for a national criminal history record check.

(b) The authority shall pay the costs for conducting any investigation under this section.

(c) (1) By February 28, 1998, all organizations which have employees that have been employed by such organization for less than one (1) year and who have direct contact with or direct responsibility for persons with developmental disabilities on either a full- or part-time basis must conduct criminal background checks on such employees and on all new employees who are hired after May 29, 1997, to have direct contact with or direct responsibility for persons with developmental disabilities on either a full- or part-time basis. Any such employee who has been with the organization for less than one (1) year shall within such time period supply a fingerprint sample for a criminal background check to be conducted by the Tennessee bureau of investigation or the federal bureau of investigation. All new employees who have direct contact with or direct responsibility for persons with developmental disabilities on either a full- or part-time basis hired after May 29, 1997, shall, within ten (10) days of beginning employment, supply a fingerprint sample for a criminal background check to be conducted by the Tennessee bureau of investigation or the federal bureau of investigation. The organization employing such employee shall retain and have on file reports of such checks.

(2) All applicants for employment with organizations described in subdivision (c)(1) shall be informed that background checks will be conducted. All applicants must list any prior conviction by any local, state, federal, or military court of any felony or any other conviction

involving sexual crimes, including but not limited to rape, sexual assault, sexual battery, exhibitionism, voyeurism, or an attempt to commit any of such sexual crimes; homicide or attempted homicide; felonious assault or attempted felonious assault; unlawful breaking or entering; robbery; burglary; theft; or arson. Further, if the applicant is required to register or has registered with the registry of sexual offenders in accordance with § 38-6-110, the applicant shall disclose such information.

(3) Any costs incurred by the Tennessee bureau of investigation or the federal bureau of investigation in conducting such investigation of applicants shall be paid by the organization requesting such investigation and information. If the background check is conducted by the Tennessee bureau of investigation or the federal bureau of investigation, the payment of such costs shall be made in the amounts established in § 38-6-103.

(4) As used in this subsection and § 38-6-114(b), "organization(s)" means an organization licensed pursuant to title 33, chapter 2, part 5, which provides services to persons with developmental disabilities through contract with the division of mental retardation services or intermediate care facilities for persons with mental retardation (ICF/MR).

SECTION 23. Tennessee Code Annotated, Title 33, is amended by deleting part 3 of chapter 1 in its entirety and by adding Sections 24 through 26 of this act as new part 3.

SECTION 24. (a) In order to coordinate the activities of the authority and to advise with such authority and to better acquaint the public with the needs and activities of such authority, there is hereby created an advisory board to be composed of five (5) members.

(b) There shall be at least one (1) member from each grand division of the state. No more than two (2) members shall be from the same grand division.

(c) No member of the board shall be an employee or representative of a mental health or mental illness organization, firm, or advocacy group.

(d) The members of the advisory board shall be appointed by the general assembly. One (1) member shall be selected by the speaker of the house and one (1) member shall be selected by the speaker of the senate. The remaining members shall be selected as follows:

A member of the general assembly may submit the name of a nominee who lives in such member's district. No member may submit more than one (1) name as a nominee. The nominee in each grand division who receives the highest number of votes in the senate shall be submitted to the house of representatives. The members of the house of representatives shall vote to accept such three (3) nominees. If the nominees do not receive a constitutional majority of votes in the affirmative, all three (3) nominees shall be deemed to be rejected and the senate shall submit the names of three (3) different nominees.

(e) The members appointed by the speakers shall serve for terms of four (4) years. The remaining members shall serve terms of two (2) years.

(f) Immediately upon qualification the advisory board shall meet and organize by electing from among its members a chair and such other officers as deemed necessary.

(g) The members of such board shall receive no compensation but shall receive their actual traveling expenses for attendance upon meetings of the board. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general.

(h) The board shall meet at least quarterly at a place to be designated by the chairman and may meet more often upon the call of the chairman, or a majority of the members.

(i) Members may be removed upon their failure to attend at least one-half (1/2) of the scheduled meetings in any one (1) year period.

(j) Vacancies shall be filled by the general assembly for such member's unexpired term.

SECTION 25. (a) It is the duty of the advisory board to advise with the commissioner concerning the formulation of general policies to be followed in the operation of the institutions

under the commissioner's jurisdiction, to recommend to the general assembly appropriate legislation for financial aid for such institutions and to publicize generally the mental health situation in this state and its needs.

(b) The advisory board, in conjunction with the commissioner, shall report annually to the general assembly the program of such institutions under the authority and may, in accordance with the rules, regulations, policies and procedures of the state publications committee, furnish copies of such reports to the general assembly with the recommendations for legislation. Other reports may be made to the fiscal review committee and to the general assembly whenever in the judgment of the advisory board the same becomes necessary.

(c) It also is the duty of the board to review and advise on the activities involved in the treatment or rehabilitation of drug or alcohol dependence, to advise the commissioner in carrying out such programs, to advise the commissioner on matters related to alcohol and drug dependence, and to better acquaint the public with the needs and activities of these programs.

SECTION 26. The board may also, at its discretion, procure indemnity insurance, indemnifying full- or part-time physicians, licensed psychologists designated as health service providers, and nonphysician superintendents of all hospitals and developmental centers under the supervision of the authority against actions by patients, residents and others, claimed to arise out of acts of omission or commission of such personnel.

SECTION 27. Tennessee Code Annotated, Title 33, is amended by deleting part 1 of chapter 2 in its entirety and by substituting instead Sections 28 through 35 of this act as new part 1.

SECTION 28. (a) The following state mental health facilities and any state mental health facilities hereafter established shall be a body politic and corporate, by its respective name, and be managed, governed and controlled by the commissioner:

- (1) Lakeshore Mental Health Institute, at Knoxville, for the mentally ill;
- (2) Middle Tennessee Mental Health Institute, at Nashville, for the mentally ill;

- (3) Western Mental Health Institute, at Bolivar, for the mentally ill;
- (4) Moccasin Bend Mental Health Institute, at Chattanooga, for the mentally ill;
- (5) Memphis Mental Health Institute, at Memphis, for the mentally ill;
- (6) Greene Valley Developmental Center, at Greeneville, for the mentally retarded;
- (7) Clover Bottom Developmental Center, at Donelson, for the mentally retarded;
- (8) Arlington Developmental Center, at Arlington, for the mentally retarded; and
- (9) A developmental center, at Bolivar, for the mentally retarded.

(b) References elsewhere in this code to "Eastern State Psychiatric Hospital" shall be construed as "Lakeshore Mental Health Institute"; to "Central State Psychiatric Hospital" shall be construed as "Middle Tennessee Mental Health Institute"; to "Western State Psychiatric Hospital" shall be construed as "Western Mental Health Institute"; to "Moccasin Bend Psychiatric Hospital" shall be construed as "Moccasin Bend Mental Health Institute"; and to "Tennessee Psychiatric Hospital and Institute" shall be construed as "Memphis Mental Health Institute."

(c) The commissioner, with the approval of the fiscal review committee and the advice of the advisory board of the authority, is authorized to designate the names of future mental health facilities or to redesignate the names of existing facilities.

SECTION 29. Each of these corporations shall have a common seal; and in its corporate name and capacity may acquire property, real and personal, by gift or otherwise, and hold, sell, and convey the same for the uses and purposes of its creation, and sue in the same manner as a natural person.

SECTION 30. (a) The commissioner shall appoint a superintendent for each hospital or developmental center to serve at the pleasure of the commissioner.

(b) Superintendents of the hospitals and of the developmental centers shall be appointed without regard to residence on the basis of merit as measured by administrative abilities and a demonstrated quality of leadership and must hold a recognized degree as a

psychiatrist, doctor of medicine, behavioral scientist, social scientist, public administrator, hospital administrator, or other profession involved with human development, human welfare, mental retardation specialist or other profession involved with health care administration (with experience in public administration).

(c) Superintendents shall have all of the authority conferred upon them by this chapter and such other authority as is delegated to them by the rules and regulations of the commissioner. Superintendents shall have the authority to administer oaths.

SECTION 31. Each hospital or developmental center superintendent shall give an official bond, in a sum to be fixed by the commissioner of finance and administration, the comptroller of the treasury and the treasurer, to be executed, conditioned and filed in accordance with the provisions of title 8, chapter 19. The cost of the bond shall be paid from funds available to the institution.

SECTION 32. (a) The superintendent of each hospital or developmental center shall be under the direction of the commissioner and shall have the following powers and duties:

(1) To exercise a general superintendence over all matters relating to the hospital or developmental center;

(2) To perform the duties of a treasurer of the institution without any additional compensation, depositing all moneys coming into such superintendent's hands in some one of the banks designated as state depositories, for safekeeping, until drawn out from time to time for the benefit of such hospitals or developmental centers; and

(3) To make such reports to the commissioner as the commissioner may require, at such times as the commissioner may direct.

(b) The superintendent shall be authorized to make written application to the fiscal review committee of Tennessee for issuance of requisition papers for the purpose of returning any person to the state of Tennessee who has escaped from any of the mental institutions and fled from the state of Tennessee when such patient or resident had been committed to such

institution. Such application shall be in the same form as now required for the return of a fugitive from justice.

(c) The provisions of chapter 3, part 9 of this chapter, to the extent that their application would be contrary to other statutes or to federal law, shall not apply to money or funds which are paid to the superintendent of any such hospital or developmental center by the veterans' administration.

SECTION 33. No official connected with the management of any of the hospitals or developmental centers shall be allowed to furnish any supplies for the maintenance of the hospital or developmental center, or make any contract with the officials of the hospitals or developmental centers for furnishing supplies to such hospitals or developmental centers for their maintenance or support, and any official violating the provisions of this section shall forfeit his right to serve as such official.

SECTION 34. The security guards at all mental health facilities and such other personnel as the commissioner may designate are vested with the powers and authority of peace officers and shall exercise such powers and authority on the grounds of institutions under the supervision of the authority.

SECTION 35. The enclosed premises and the land adjoining the same belonging to, or used by and for any of the state hospitals or developmental centers, are declared private grounds. If a person goes on such premises without authority or permission, such person commits a Class C misdemeanor.

SECTION 36. Tennessee Code Annotated, Title 33, Chapter 2, is amended by deleting part 2 in its entirety and by substituting instead Sections 37 through 38 of this act as new part 2.

SECTION 37. (a) In order to coordinate the activities of the hospitals and developmental centers and to advise the superintendent at each institution and to better acquaint the public with the needs and activities of such institution, there are hereby created boards of trustees for each institution to be composed of eighteen (18) members each.

(b) (1) The commissioner, the appropriate assistant commissioner, and the superintendent at each institution shall be ex officio members of each advisory board.

(2) The remaining fifteen (15) members, not more than ten (10) of whom shall be of the same political party, shall be appointed by the fiscal review committee, and all shall reside in the area served by the institution.

(3) State officials shall be eligible for appointment at the hands of the fiscal review committee, but not more than three (3) state officials shall be appointed members of such board at the same time.

(c) The chairman of each board shall be designated by the fiscal review committee. The vice-chairman of each board shall be designated by the commissioner of the authority.

(d) The members of each board shall receive no compensation but shall receive their actual traveling expenses for attendance upon meetings of the boards. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the authority of finance and administration and approved by the attorney general.

(e) The superintendent of each institution shall serve as secretary for the respective boards.

(f) The board shall meet annually at a place to be designated by the chairman and may meet more often upon call of the chairman, or a majority of the members.

(g) As soon as convenient after June 1, 1974, the fiscal review committee shall appoint one (1) member for a term of one (1) year, two (2) members for a term of two (2) years, one (1) member for a term of three (3) years, two (2) members for a term of four (4) years, one (1) member for a term of five (5) years, two (2) members for a term of six (6) years, one (1) member for a term of seven (7) years, and one (1) member for a term of eight (8) years, the terms of such members to begin as of July 1 next following their appointments. Subsequent

appointments shall be made for a period of eight (8) years except that vacancies shall be filled by appointment by the fiscal review committee for the unexpired term only.

(h) Members may be removed upon their failure to attend at least one-half (1/2) of the scheduled meetings in any one (1) year period.

SECTION 38. (a) It is the duty of each advisory board to advise the superintendent of each institution concerning the formulation of general policies to be followed in the operation of the institution under such superintendent's jurisdiction, to recommend to the authority appropriate legislation for financial aid and other concerns for such institution and to publicize generally the mental health situation of the institution and its needs.

(b) Each advisory board in conjunction with each superintendent shall report annually to the commissioner, to the chair of the house government operations committee, and to the chair of the senate government operations committee, the program of such institution together with recommendations for legislation.

SECTION 39. Tennessee Code Annotated, Title 33, Chapter 2, is amended by deleting Part 3 and by substituting instead Sections 40 through 45 as new Part 3.

SECTION 40. (a) (1) Notwithstanding the provisions of this chapter, the authority, through its commissioner, may contract with corporations, partnerships, public authorities, or other legal entities authorized to do business in Tennessee, to manage and operate Lakeshore Mental Health Institute. The authority shall follow §§ 12-4-109 and 12-4-110, and the rules and regulations promulgated under these sections, in contracting the management and operation of the mental health institutes. The authority shall be required to develop a request for proposal (RFP) and submit the request for proposal to the commissioner of finance and administration and the comptroller of the treasury for approval before submission to prospective vendors. The request for proposal shall require prospective vendors to submit information concerning qualification of the vendor, prior experience in similar contract engagements, in addition to the cost proposal and technical proposal. At least three (3) qualified bids shall be required to be

received by the authority before a decision is made to award a contract under this chapter. The commissioner of finance and administration and the comptroller of the treasury shall monitor the authority's evaluation process and proposed contracts shall be subject to the approval of such officials.

(2) Appropriations made by the general assembly for the operation of a mental health institute may be used by the authority for the management and operation of such facility by a contractor under this part. Provided, however, any funds appropriated for the operation of any contracted mental health institute which are unexpended by the authority as the result of decreased patient days or management efficiencies shall be retained by the authority and allocated to the community mental health program. The authority to contract for management of a facility under this section terminates three (3) years from the first day of a contract entered for the respective facility.

(b) A mental health institute which is managed and operated under this part is a public facility, owned by the state of Tennessee. The laws of this chapter, including provisions regarding admission, transfer, and discharge of patients and residents, reimbursement and licensure, and boards of trustees, govern its operation and management, unless application is expressly excluded by this part. The commissioner retains such authority over admission and discharge of patients or residents, their care, custody, and control, and contracting for provision of community services, as is set forth in this chapter, rules, and policies of the authority, and contract. Contracting for management and operation of mental health institutes does not restrict the provision of services through community mental health centers and community mental retardation programs, which are the primary providers of mental health and mental retardation services. A contractor that manages and operates a mental health institute under this part is not bound by enactments of the general assembly that govern:

(1) The administration of personnel, including title 8, chapter 30, except as provided herein;

(2) The purchase of goods and services, including title 12, chapter 3, and §§ 12-4-109, 12-4-110; or

(3) The administration, disposition, and inventory of property and surplus property, including title 12, chapter 2, and § 4-3-1105.

A contractor may purchase, inventory, and dispose of goods, property, and surplus property under these laws, with the approval of and under conditions set by the board of standards. The authority of general services may, upon request, purchase supplies and equipment for a contractor to manage and operate a facility. The purchases shall be made on the same terms and rules that govern the purchase of supplies and equipment by the authority of general services. The contractor shall pay for all such purchases.

(c) The provision of § 33-2-103, regarding superintendents, does not apply to facilities managed and operated by a contractor under this section. A contractor has all authority and duties as are otherwise conferred on superintendents by this chapter or by rules and regulations of the commissioner, unless limited by contract, rules, or policies of the authority.

(d) (1) There shall be established a statewide citizen review panel. The panel consists of eleven (11) members. Two (2) members shall be members of the general assembly, one (1) from each house, appointed by the respective speaker; nine (9) members shall be citizens appointed by the fiscal review committee. Appointments by the fiscal review committee shall include the following:

(A) A member of the authority's advisory board and a member of the advisory board of each contracted facility;

(B) Three (3) persons nominated by the Tennessee association of mental health centers, at least one of the three (3) representing a mental health group from the community of the contracted facility's location; and

(C) One (1) person nominated by the mental health association of Tennessee.

The employees of Lakeshore shall elect two (2) of its employees to the panel. The fiscal review committee shall appoint a chairman; the panel may elect other officers. The panel may establish bylaws and operating procedures and shall meet quarterly, or as may be otherwise determined by the panel. Each member serves a three (3) year term; the appointing authority may fill vacancies for unexpired terms.

(2) The purpose of the panel is to monitor and review the effectiveness of the management contracts entered into under this part. The panel shall report on these matters annually to the fiscal review committee, the commissioner, and the speakers. The panel is created on implementation of the first management contract and terminates after three (3) years from the beginning of the first management contract. Panel members shall be reimbursed by the authority for travel expenses under state comprehensive travel regulations.

SECTION 41. Any contract entered into pursuant to this part shall contain the following provisions:

(1) For the initial year of the contract, the maximum obligation of the state under the contract shall not exceed the requirements against the affected appropriation for the most recently completed fiscal year, increased by the percentage change of the most recent recommended budget over the estimated preceding budget. For each succeeding year of the contract period, the amount of the contract shall not be based on automatic indices.

(2) The maximum contract amount for any year of the contract as determined in subdivision (1) shall be adjusted by the following:

(A) Actuarially determined amount by which the employer contributions to the Tennessee consolidated retirement system would have been had new employees hired by the contractor been hired by the state exceeds the employer contributions for such employees under the retirement system provided for by the contractors; or

(B) Amounts and/or items presently being charged against the appropriation of the agency for which a contract is executed, but for which the contractor is not liable.

(3) A penalty provision for failure of the contractor to maintain accreditation by the joint commission on accreditation of hospitals.

SECTION 42. A contract for management of a facility under this part shall provide that the authority has the right to enter the facility immediately and intervene in the operation when it has good cause to believe such action is necessary to protect the health or safety of any patient, and to terminate the contract for such cause on thirty (30) days notice.

SECTION 43. The contract for the management of a mental health institute by a private legal entity shall contain among its provisions, a clause that requires the managing entity to correct deficiencies noted by licensing or accrediting agencies to provide for the correction of such deficiencies in a manner consistent with the procedures for the correction of such deficiencies in state-operated facilities.

SECTION 44. The contract for the management of a mental health institute by a private legal entity shall contain among its provisions a clause which requires the managing entity to provide a patient's advocate or advocate group the same access that would be available to such person or group in a state-operated facility.

SECTION 45. The contract for the management of a mental health institute by a private legal entity shall contain among its provisions, a clause which would prohibit the managing entity from entering into any business transaction relative to that mental health center with any person who was a state employee or officer in a position paying an annual salary of twenty thousand dollars (\$20,000) or more, except for employment contracts with persons who were previously employed by the state in such facility.

SECTION 41. Any contract with a private entity must be approved by the state attorney general's office, not only as to form and legality, but also to make certain the contractor's performance is adequately guaranteed under the terms thereof.

SECTION 42. (a) The comptroller of the treasury may audit the records, including clinical and program records, of any management contractor with respect to any contract under this part.

(b) While Lakeshore Mental Health Institute is under the management and operation of a private legal entity under a contract with the authority, such institute shall be subject to periodic review and audit by the fiscal review committee.

SECTION 43. (a) (1) Each member of the classified service whose employment is affected by this part shall be offered another available state job or employment with the contractor on the effective date of any contract.

(2) No regular civil service employee may be terminated by the contractor within the first nine (9) months of the contract except for cause as defined by Rule Number 1120.7.2.08 of the authority of personnel, governing disciplinary actions as it is in effect on March 16, 1982, and no such person's salary may be reduced within the first nine (9) months except as a result of disciplinary action.

(b) (1) For each member of state service who becomes employed by the contractor, his accrued leave, including annual, compensatory, and sick leave, shall transfer from the state to the contractor in total and shall be administered and accounted for by the contractor in a manner similar to that by the state. Further, such accumulated leave shall be transferred from the contractor to the state upon termination of the contract.

(2) Such contractor shall provide a comparable leave policy to that provided for general state employees.

(3) No adjustments shall be made to the contract amount as a result of leave transfers or policies.

(c) If a mental health institute returns to state management and operation within three years of its being contracted, each former member of the classified service who becomes and remains an employee of the contractor may return to state employment. He shall retain all

rights, privileges, and seniority that he had when he left state employment, including unexpended leave transferred to the contractor. He shall be entitled to transfer his unexpended leave accrued with the contractor, including annual and sick leave, to the extent such leave would have been accrued during the contract period under applicable state law and rules. He shall be appointed to a position, if available, equal to or comparable to that which he left in the classified service or which he last held with the contractor unless he does not qualify for the position under civil service laws and rules. If he does not qualify he shall be appointed to the available position closest to the position or generic class of positions which he left in the classified service for which he qualifies.

(d) Each regular civil service employee at Lakeshore Mental Health Institute who becomes an employee of the contractor on the effective date of the contract and is not terminated for cause by the contractor shall be deemed a state employee for the purposes of access to all civil service registers for transfer to employment in any agency of the state while employed with the contractor at Lakeshore during the contract period.

SECTION 44. (a) Employees of mental health institutes who are members of the state service immediately preceding the implementation date of a contract under this part are eligible for membership in the Tennessee consolidated retirement system under the same conditions that apply to state employees. Such employees shall make the same contributions and shall be eligible for the same benefits as state employee members. Any other person, including any person who is employed or reemployed after the date a contractor assumes the management and operation of a mental health institute, however, is not eligible for membership in the retirement system.

(b) Any employee eligible under subsection (a) may continue his membership in the retirement system when the contractor assumes the management and operation of such facility; otherwise, he may elect to withdraw from the retirement system and receive a refund of his

contributions. Such withdrawal constitutes a waiver of any right to reestablish such service at a future date based upon his employment at a mental health institute under a contractor.

(c) If the contractor has a retirement plan for its employees, an employee who elects to participate in such plan may not participate in the Tennessee consolidated retirement system.

(d) The contractor shall make normal contributions, special accrued liability contributions, and cost of living contributions, as determined by an actuarial valuation, in the same way as for state employee members, for each employee who elects to continue his membership in the retirement system.

(e) The contractor shall pay his contributions to the advisory board of the retirement system according to a schedule set by the board, and all benefits payable to employees of any such contractor shall be contingent upon the payment of the necessary contributions by the contractor and its employees.

(f) The authority serves as administrative agent between the contractor and the Tennessee consolidated retirement system.

SECTION 45. The commissioner shall submit a progress report on any facility contracted under this part to any committees of the house of representatives and senate so designated by the respective speaker. The commissioner shall submit the report annually or as directed by the speakers.

SECTION 46. Tennessee Code Annotated, Title 33, Chapter 2, is amended by deleting Part 4 in its entirety and by substituting instead Section 47 as new Part 4.

SECTION 47. Any corporation which is exempted from taxation under 26 U.S.C. § 501(c)(3), as amended, and which contracts with the authority to provide services to the public shall be authorized to purchase or contract to purchase goods or services at the same terms and conditions as that contracted for by the state under state purchasing contracts. Purchases by and for such corporation shall not be required to be made through the purchasing division of the authority of general services.

SECTION 48. Tennessee Code Annotated, Title 33, Chapter 2, is amended by deleting Part 5 in its entirety and by substituting instead Sections 49 through 60 of this act as new Part 5.

SECTION 49. For the purpose of this part, unless the context requires otherwise:

(1) (A) "Facility" means an institution, treatment resource, group residence, boarding home, sheltered workshop, activity center, rehabilitation center, hospital, community mental health center, counseling center, clinic, halfway house, or other entity, by these or other names, providing mental health, mental retardation services;

(B) "Facility" does not include:

(i) Offices of practitioners, clinicians or therapists used in the private practice of their profession;

(ii) Facilities providing residential personal care to only one (1) mentally ill or mentally retarded person;

(iii) Foster homes which accept placements only from agencies of state government or licensed child-placing agencies;

(iv) Places providing services from a family member to only family members or relatives;

(v) Facilities providing employee assistance programs;

(vi) Facilities providing only employment placement;

(vii) A facility which is appropriately licensed by the authority of health as a:

(a) Hospital whose primary purpose is not for the provision of mental health or mental retardation services; or

(b) Satellite hospital, as defined by rules of the authority of health, whose primary purpose is the provision of mental health or mental retardation services, and which the authority verifies to the authority of health as satisfying standards under this chapter.

(viii) A facility which is operated by the authority of education or the authority of correction which affirmatively states that the primary purpose of the facility is other than the provision of mental health or mental retardation services.

(2) "Mental health, mental retardation" means the diagnosis, evaluation, treatment, residential personal care, habilitation, rehabilitation counseling, or supervision of persons who have mental illness or mental retardation;

(3) "Licensee" means a proprietorship, a partnership, an association, a governmental agency, or corporation, which operates a facility. Notwithstanding any references in this chapter to the licensing of "facilities," only proprietorships, partnerships, associations, governmental agencies, or corporations may be listed on license applications or licenses as the licensed entity; and

(4) "Reputable and responsible character" means a personal and/or business history which suggests that the licensee can be trusted with responsibility for individuals particularly vulnerable to neglect and financial and sexual exploitation. Personal and/or business histories involving operation of substandard facilities or an arrest record resulting in a conviction for offenses relating to theft, larceny, embezzlement, rape, assault, homicide, drugs, or pornography are inherently inconsistent with "reputable and responsible character."

SECTION 50. (a) The authority has the power to license facilities operated for the provision of mental health or mental retardation services.

(b) (1) The authority shall appoint a nine (9) member review panel to review periodically all exclusions and waivers granted under the licensure law.

(2) The committee's membership is:

- (A) The commissioner or the commissioner's designee;
- (B) A member of the authority's office of legal counsel;
- (C) A representative of licensed community mental health centers;
- (D) A representative of licensed alcohol and drug abuse treatment centers;
- (E) A representative of licensed mental retardation community agencies;
- (F) A representative of a licensed residential facility for the mentally ill; and
- (G) Three (3) consumer representatives.

(3) The committee shall elect a chair and vice chair and shall report any findings directly to the commissioner.

(4) The vote of a majority binds the committee.

(5) Expenses for committee members for travel and lodging under this part are governed by rules of the authority of finance and administration.

SECTION 51. The authority shall promulgate rules and regulations for licensure of facilities regarding adequacy of services, qualifications of professional staff, and facility conditions. The regulations shall include consideration of the adequacy of environment, life safety, treatment or habilitation services, educational and training requirements of the staff, and such other considerations as are deemed necessary by the authority to determine the adequacy of the provision of mental health and mental retardation services. The authority may adopt rules or regulations for the administration of a licensure program.

SECTION 52. (a) It is unlawful for any person, partnership, association or corporation to own or operate a facility which provides mental health or mental retardation services within the meaning of this part without having applied for and obtained a license as required by this part.

(b) A violation of this requirement is a Class B misdemeanor.

(c) Each day of operation without a license constitutes a separate offense.

SECTION 53. (a) Any person, partnership, association, corporation, or any state, county or local governmental unit or any division, authority, board or agency thereof, in order to lawfully establish, conduct, operate or maintain a facility which provides mental health or mental retardation services shall obtain a license therefor from the authority in the following manner:

(1) The applicant shall submit an application on a form to be prepared by the authority showing that the applicant is of reputable and responsible character and able to comply with the minimum standards for a facility providing mental health or mental retardation services and with the rules and regulations lawfully promulgated under this

part. The application shall contain the following additional information: the name of the applicant, the type of facility to be operated, the location thereof, the name of the person or persons to be in charge thereof, and such other information as the authority may require;

(2) The authority may approve the issuance of a license upon the application without further evidence; or, in its discretion, it may conduct its own investigation, to determine whether or not a license ought to be granted;

(3) A license shall not be issued or renewed upon proof that the licensee, or any chief executive officer or director of the licensee, has been convicted of a felony in a court of competent jurisdiction, either within or without this state. Such proof creates a presumption that the licensee is not of "reputable and responsible character." Any applicant denied a license on this basis may request a hearing for the purpose of rebutting the presumption created by this subsection;

(4) If the authority determines that a license should not be granted, it shall so notify the applicant. Within fifteen (15) days of such notification of denial, the applicant may file a written request for review by the panel described in Section X of this act. Such review shall be at the earliest possible date, and recommendations shall be reported to the commissioner. The commissioner shall determine whether the original licensure denial shall remain effective and shall so notify the applicant. Within fifteen (15) days of such notification, the applicant may file a written request for a hearing before the authority. Such hearing shall be conducted under the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(5) If the authority determines that the applicant complies and will in the future comply with the provisions of this part and the rules and regulations promulgated hereunder, the authority shall issue a license; and

(6) A license is valid for up to one (1) year from the date of issuance. A license shall not be assignable or transferable, shall be issued only for the premises named in the application, shall be posted in a conspicuous place in the facility, and may be renewed from year to year. The authority may charge a reasonable fee for processing the application and issuance of licenses.

SECTION 54. (a) The authority may suspend or revoke a license issued hereunder on any of the following grounds:

(1) Violation of any of the provisions of this part or the rules and regulations issued pursuant hereto;

(2) Permitting, aiding or abetting the commission of any illegal act in a licensed facility; or

(3) Conduct or practice found by the authority to be detrimental to the welfare of the clients of a licensed facility.

(b) The procedure governing the suspension or revocation of any license shall be as follows:

(1) A complaint shall be filed by the authority stating facts constituting a ground or grounds for revocation or suspension;

(2) If the authority determines that a license should be suspended or revoked, it shall so notify the applicant. Within fifteen (15) days of such notification, the applicant may file a written request for review by the panel described in § 33-2-503(b). Such review shall be at the earliest possible date, and recommendations shall be reported to the commissioner. The commissioner shall determine whether the original action shall remain effective and shall so notify the applicant. Within fifteen (15) days of such notification, the applicant may file a written request for a hearing before the authority. Such hearing shall be conducted under the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(3) The authority may determine after such hearing either that the license be suspended or that it be revoked;

(4) If the authority determines that a license should be suspended, it may also set forth the conditions to be met by the licensee during the period of suspension in order to entitle the licensee to resume operation of the facility;

(5) If the authority recommends that a license should be either suspended or revoked, it shall enter an order in accordance therewith and shall set forth the grounds of such suspension or revocation; and

(6) The authority may, in its discretion, after hearing, hold a case under advisement and set forth requirements to be met by a licensee in order to avoid either suspension or revocation. In such cases, the authority shall enter an order accordingly and notify the licensee thereof by certified mail. If the licensee complies with such order and proves that fact to the satisfaction of the authority, the authority shall enter an order showing satisfactory compliance and dismissing the case because of such compliance.

SECTION 55. (a) The authority may, in accordance with the laws of the state of Tennessee governing injunctions, maintain an action in the name of the state of Tennessee to enjoin any person, partnership, association or corporation from establishing, conducting, managing or operating any facility providing mental health or mental retardation services within the meaning of this part without having a license.

(b) In charging any defendant in a complaint for such injunction, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, conduct, manage or operate a facility providing mental health or mental retardation services or that the defendant is about to do so without having a license, without averring any further or more particular facts concerning the case.

SECTION 56. (a) The authority shall make at least one (1) unannounced inspection of each licensed facility yearly.

(b) Upon giving reasonable notice, the authority may enter and inspect any facility making application for or holding a license. The authority may charge a fee for such facility inspection in an amount not to exceed fifty dollars (\$50.00). Such inspection may include the review of physical plant, program, activities, and facility records.

(c) If the authority finds noncompliance with life safety or food service standards relating to non-life-threatening issues, it shall refer such findings to the state or local agency responsible for life safety or food service inspection for reinspection or review in accordance with life safety or food service standards. The authority will accept the state or local agency's determination.

SECTION 57. The authority may provide advice and assistance to facility owners or operators seeking a license under this part. The authority shall provide assistance in placing persons disabled by the denial, suspension, or revocation of a license under this part.

SECTION 58. (a) The authority may grant a provisional license for up to one (1) year to a facility if:

(1) The facility is making a diligent effort to comply with standards promulgated under this part;

(2) The continued operation of the facility will not endanger the health or safety of its clients;

(3) The continued operation of the facility is necessary because care is not otherwise reasonably available for its clients;

(4) The facility has submitted an acceptable compliance plan specifying how and when deficiencies will be corrected; and

(5) The facility has substantially met the commitments made in the preceding year's compliance plan, if any.

(b) Failure to meet the commitments made in the compliance plan is a ground for revocation or suspension of the license.

(c) Copies of provisional licenses and compliance plans shall be maintained in a central location and are open to public inspection.

SECTION 59. (a) The authority shall investigate serious reports of abuse, dereliction or deficiency in the operation of a licensed facility.

(b) (1) Any person making any report or investigation pursuant to this chapter, including representatives of the authority in the reasonable performance of their duties and within the scope of their authority, shall be presumed to be acting in good faith and shall thereby be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

(2) Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or investigation.

(3) Any person making a report under the provisions of this chapter shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes a detrimental change in the employment status of the reporting party by reason of the report.

(c) (1) The commissioner shall suspend or revoke the license of any facility if serious abuse, dereliction or deficiency is found and not corrected in a reasonable time.

(2) The commissioner, in the commissioner's discretion, may suspend admissions to a facility pending resolution of the investigation or of proceedings to suspend, revoke, or deny the license, or until the facility corrects any serious abuse, dereliction, or deficiency found in the course of the investigation. The commissioner may suspend the admissions to a licensed facility based only on probable cause that abuse, dereliction, or deficiency in the operation of the licensed facility has occurred or would occur without suspension of admissions. Such suspension of admissions must not exceed a period of one hundred twenty (120) days; provided, that at the discretion of the commissioner such period may be extended for an additional period not to exceed one hundred twenty (120) days. Nothing in this part is intended

to derogate from the right of the authority to issue an order of summary suspension of the license pursuant to the authority granted by § 4-5-320(c) and (d).

(d) A facility which can demonstrate compliance with regulations and standards by previously acquired license from another state agency is considered in compliance with regulations and standards under this part to the extent that duplicate inspection and enforcement is necessary.

SECTION 60. (a) If the commissioner finds that a facility is providing mental health or mental retardation services without a license, the commissioner may, without prior notice, order the facility immediately to cease and desist from providing mental health or mental retardation services. The commissioner must find that entering the order is in the public interest; necessary for the protection of the health, safety, or welfare of the clients of the facility; and consistent with the purposes fairly intended by this part.

(b) The order must state the relevant findings of fact and conclusions of law that support the commissioner's finding that entering the order without prior notice is in the public interest, necessary for the protection of the clients of the facility, and consistent with this part. The order must provide notice to the respondent of the respondent's rights and responsibilities concerning review of the order.

(c) The owner of the facility ordered to cease and desist operation may seek review of the order before the commissioner or the commissioner's designee as set out below:

(1) The owner or legal representative of the facility may request an informal conference before the commissioner or the commissioner's designee. The request must be filed with the commissioner within thirty (30) days of entry of the order. The commissioner or the commissioner's designee shall convene the requested informal conference within seven (7) days of the date of receipt of such request. The conference is informal and the facility has the right to be represented by counsel at all stages of the informal conference.

(2) The sole issue to be determined at the informal conference is whether the facility was operating without a license as required by this part prior to or concurrently with the date of the entry of the order. This part and its rules, control this determination. At the conference the commissioner may uphold, amend, or rescind the cease and desist order. Unless contested under subdivision (c)(3), the original or amended cease and desist order becomes a final order within seven (7) days.

(3) If the commissioner or the commissioner's designee determines, as a result of the informal conference, that the cease and desist order should be amended or should not be rescinded, the owner or legal representative of the facility may seek review of the order under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. The request must be made in writing to the commissioner within seven (7) days of receipt of written notice of the commissioner's decision. Upon receipt of the request, the commissioner shall immediately refer the matter to the authority of state for initiation of contested case proceedings.

(4) If the respondent fails to request an informal conference under subdivision (c)(1), then the cease and desist order becomes a final order of the commissioner within thirty (30) days of its entry. The facility may obtain judicial review of this final order in the chancery court of Davidson County under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(d) It is a Class B misdemeanor to violate a cease and desist order lawfully entered by the commissioner. Each day of operation in violation of the commissioner's cease and desist order, calculated from the date of its service upon the owner or operator of the facility, is a separate offense.

(e) Nothing in this part precludes any person, including the authority, who is aggrieved by the operation of an unlicensed facility from pursuing other remedies and sanctions, including those provided by §§ 33-2-505 and 33-2-508.

SECTION 61. Tennessee Code Annotated, Title 33, Chapter 2, is amended by deleting Part 6 in its entirety and by substituting instead Sections 62 through 64 as new Part 6.

SECTION 62. The authority shall develop a system for assuring the most appropriate and effective care for individuals admitted to and discharged from state-supported mental health institutes. This system shall include a community-based screening process. The system shall be designed to minimize length of confinement, promote speedy return to the community, and maximize the individual's ability to remain in a community setting.

SECTION 63. By January 1, 1999, the commissioner shall establish by rule procedures and requirements necessary to implement this system throughout the state. The provisions of this system shall not conflict with any other provisions of this chapter nor result in the complete exclusion of eligible patients from receipt of appropriate mental health services nor infringe on the patient's existing legal and constitutional rights and confidentiality requirements.

Implementation of this system shall be subject to the availability of funds.

SECTION 64. Before statewide implementation of the system, the commissioner may improve implementation of pilot systems in any regions of the state. If the commissioner approves implementation of a pilot system, then:

- (1) The system must operate in conformity with authority rules;
- (2) The commissioner must notify entities likely to be affected by the system, including courts, law enforcement, physicians, and hospitals of establishment of the system;
- (3) If a person is a patient in a state-operated mental health institute that serves the system, and the person requires involuntary care and treatment under § 33-6-104, then a commitment to a state-operated mental health institute by a civil court under § 33-6-104, may occur only if the community mental health center from the person's catchment area provides a sworn affidavit to the court which states that all available less drastic alternatives to placement in a hospital or treatment resource are unsuitable to meet the needs of the person;

(4) If a person is not a patient in a state-operated mental health institute and requires involuntary care and treatment in a state-operated mental health institute that serves the system, then admission or commitment under § 33-6-103 or § 33-6-104, is valid only if the mandatory prescreening authority provides one (1) of the certificates for each set of certificates of need required by §§ 33-6-103(d) and (h) and 33-6-104;

(5) A state-operated mental health institute that serves the system may not admit a patient under § 33-6-101, unless a physician provided by a mandatory prescreening authority within the system recommends the admission; and

(6) The system must participate in deliberations to transfer a mentally ill patient to or from its service area under Section XX, and must recommend transfer of a mentally ill patient from a licensed private facility in its service area to a state-operated facility or the transfer is invalid.

SECTION 65. Tennessee Code Annotated, Title 33, Chapter 3, is amended by deleting Part 1 in its entirety and by substituting instead Sections 66 through 77 as new Part 1.

SECTION 66. No person shall be deprived of his liberty on the grounds that he is, or is supposed to be, mentally ill, mentally retarded, or in need of mental treatment, except in accordance with the provisions of this chapter.

SECTION 67. (a) Any individual who:

(1) Without probable cause for believing a person to be mentally retarded or mentally ill, causes or conspires with or assists another to cause the hospitalization or admission of any such person under this chapter; or

(2) Causes or conspires with or assists another to cause the denial to any person of any right accorded to such person under this chapter; commits a Class E felony.

(b) Any individual who without probable cause for believing a person to be mentally retarded or mentally ill executes a petition, application, or certificate pursuant to this chapter, by

which such individual secures or attempts to secure the apprehension, detention, hospitalization, admission, or restraint of any such person, and any physician or psychologist who knowingly makes any false certificate or application pursuant to such chapters as to the mental condition of any person, commits a Class E felony.

(c) The commissioner or the superintendent of any hospital or developmental center or treatment resource acting pursuant to the provisions of this chapter shall be entitled to rely in good faith upon the representations made for admission by any individual or any certification with respect to any individual made by a licensed physician, licensed psychologist, or any court.

(d) All persons acting in good faith, reasonably and without negligence in connection with the preparation of petitions, applications, certificates or other documents or the apprehension, detention, discharge, examination, transportation or treatment of an individual under the provisions of this chapter shall be free from all liability, civil or criminal, by reason of such acts.

SECTION 68. It is a Class C misdemeanor for any person knowingly to furnish false information for the purpose of securing the hospitalization or admission of any individual to any public facility for the mentally ill or mentally retarded.

SECTION 69. The following rights of patients and residents apply, whenever appropriate, to both the mentally ill and the mentally retarded:

(1) Visitors; Mail. Every patient or resident shall be entitled to:

(A) Receive visitors during regular visiting hours;

(B) Communicate by sealed mail or otherwise with the patient's or resident's attorney, physician, minister, family, and the courts; and

(C) Receive uncensored mail from the patient's or resident's attorney or personal physician. All other incoming mail or communications may be read before being delivered to the patient or resident, if the superintendent believes such action is necessary for the medical welfare of the patient or resident who is the intended recipient.

However, any mail or other communication which is not delivered to the patient or resident for whom it is intended shall be returned immediately to the sender. The superintendent of the hospital or developmental center has the right to make reasonable rules and regulations regarding visitors and visiting hours and the use of telephone and telegraph facilities;

(2) Care and Treatment. Any person who is mentally ill or mentally retarded is entitled to humane care and treatment, and, to the extent that facilities, equipment and personnel are available, to medical care and other professional services in accordance with the highest standard of accepted medical practice. The superintendent shall keep records detailing all such care and treatment received by any such person and such records shall be made available, upon that person's written authorization or that of the patient's or resident's guardian, to the patient's or resident's attorney or personal physician. Such records shall be preserved by the superintendent until such person has been discharged from the hospital or developmental center and for such additional time as the commissioner may direct, but in no event less than ten (10) years. The records may be generated in, maintained in or transferred in whole or in part to any recording medium, including an electromagnetic medium, that assures accurate preservation of the record. If a record is transferred from one medium to another, the source record may be destroyed upon determination by the superintendent that the reproduced record is true and correct and will be accurately preserved. The reproduced record is deemed to be the original record.

(3) Education and Training. Every individual shall be entitled to education and training suitable to the patient's or resident's age and attainments and capacity to learn;

(4) Restraints Restricted. No mechanical restraint, including isolation shall be applied in the care, training, or treatment of any mentally ill or mentally retarded person unless required by the patient's or resident's medical or treatment needs. The superintendent shall designate professionals whose qualifications are specified in authority regulations who may prescribe such

restraint. Such restraint shall be removed whenever the condition justifying its use no longer exists. Any use of a mechanical restraint, together with the reasons therefor, and the duration of its use, shall be made a part of the medical or habilitation record of the patient or resident;

(5) Civil Rights. No patient or resident hospitalized or admitted pursuant to this chapter shall, solely by reason of such hospitalization or admission, be denied the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, give informed consent to treatment, and vote, unless such patient or resident has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity. If the superintendent of the hospital or developmental center in which any such patient or resident is hospitalized or admitted is of the opinion that such patient or resident is unable to exercise any of the aforementioned rights, the superintendent shall notify immediately the patient or resident and the patient's or resident's attorney, parent, guardian, legal custodian, spouse or other nearest known adult relative of the fact, and the superintendent may file for the appointment of a limited guardian under title 34, chapter 4, part 1 and shall notify those persons as to whether the superintendent intends to do so;

(6) Expiration of Previously Imposed Restrictions. Any individual who, by reason of a judicial decree ordering that individual's hospitalization or admission entered under the laws of Tennessee prior to July 1, 1965, is considered to be mentally incompetent and is denied the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, and vote solely by reason of such decree shall, upon the expiration of one (1) year immediately following July 1, 1965, be considered to have been restored to legal capacity unless, within such one-year period, affirmative action is commenced to have such individual adjudicated mentally incompetent by a court of competent jurisdiction;

(7) Notice of Transfer Between Institutions. Whenever an individual is transferred from one (1) institution to another by order of the authority, notice thereof shall be given, in advance when possible, by the authority to:

(A) The patient or resident; and

(B) In writing by registered mail to the individual's parent, guardian, legal custodian, spouse or adult next of kin, or, if none be known, to the individual's nearest known relative or a friend whose address is known and, if the individual was hospitalized or admitted under a court order, to the court which ordered the individual's hospitalization or admission;

(8) Release Procedures Statement. Any patient or resident, and the patient's or resident's parent, guardian, legal custodian, spouse or other nearest known adult relative, shall receive, upon admission of the patient or resident to the hospital or developmental center, a written statement outlining in simple, nontechnical language all release procedures provided by this chapter, setting out all rights accorded to patients or residents by this chapter, and describing procedures provided by law for adjudication of incompetency and appointment of a guardian for the individual. The superintendent shall provide reasonable means and arrangements for assisting patients or residents in making and presenting requests for release, including petitions to the proper court;

(9) Habeas Corpus. Any patient or resident in a public or private institution for the mentally ill or mentally retarded shall be entitled to prosecute a writ of habeas corpus upon proper petition by the patient or resident or a friend to any court generally empowered to issue the writ of habeas corpus in the county in which the patient or resident is detained; and

(10) Confidential Records. (A) All applications, certificates, records, reports and all legal documents, petitions and records made or information received pursuant to this chapter and directly or indirectly identifying a patient or resident or former patient or resident under this chapter or prior law of this state shall be kept confidential and shall not be disclosed by any person except insofar as:

(i) Any of the following may consent:

(a) The individual identified who is sixteen (16) years of age or over;

- (b) The legal guardian on behalf of the adult individual identified;
- (c) The parent, guardian or custodian of a minor; or
- (d) The executor, administrator or personal representative on behalf of a deceased patient or resident or former patient or resident;
- (ii) Disclosure may be necessary to carry out the provisions of this chapter;
- (iii) Disclosure may be necessary to assure service or care to the individual by the least drastic means that are suitable to the individual's liberty and interests; or
- (iv) A court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to public interest or to the detriment of either party to the proceedings.

(B) Nothing in this subdivision (10) shall prohibit disclosure, upon proper inquiry, of information as to the current medical condition of a patient or resident to any members of the family of a patient or resident or to a patient's or resident's relatives or friends. The authority may promulgate rules to implement this subdivision (10), including rules on the form and content of consent and disclosure, scope of permissible disclosure, and definitions of terms. This subdivision (10) does not preclude making reports of harm or granting access to records if making reports of harm or granting access to records are expressly required by title 37, chapter 1, parts 4 and 6, and title 71, chapter 6. A violation of subdivision (10) is a Class C misdemeanor. Court clerks shall keep separate records of adjudications of incompetence and of restoration of competence. Such records shall be open for inspection by members of the public.

(C) Nothing in this subdivision (10) shall prohibit disclosure to the law enforcement agency having jurisdiction where an offense occurred of felonious acts of bodily harm or sexual offenses that appear to have been committed on the premises of a facility whose records are made confidential by this subdivision. If the felonious act involves a sexual offense governed by title 37, chapter 1, part 6 and title 71, chapter 6, part 1, in a locality having a sex abuse crime unit, then disclosure for law enforcement investigative purposes shall be made only to that unit

of the law enforcement agency. This does not limit the requirements of disclosure of reports of harm and access under subdivision (10)(B) to records required by title 37, chapter 1, parts 4 and 6 and title 71, chapter 6, part 1 for investigations by the authority of human services. Permissible disclosure of a felonious act for the purpose of conducting a necessary investigation includes:

(i) The name of, and providing access to, witnesses or potential witnesses of such offense;

(ii) The name of, and providing access to, suspects or potential suspects of such offense; and

(iii) The scene of, and providing access to, where such offense occurred.

(D) (i) Notwithstanding the provisions of subdivisions (10)(A) and (B), in any case where a person is known to have been accused of physically or sexually abusing or neglecting a minor child, the minor child's record shall not be accessible to the person accused of such abuse or neglect except:

(a) By an order of the court pursuant to subdivision (10)(A)(iv); or

(b) Where the minor child's mental health treatment professional has determined in the course of such treatment that the release of the minor child's record to the accused person would not be harmful to the child and the accused person is the parent, guardian or custodian of the minor child.

(2) If the court permits access to the minor child's record pursuant to subdivision (10)(D)(i)(a), the court shall have jurisdiction to issue any necessary orders which shall control the access and the use of the information by the person seeking access including the issuance of injunctive relief.

SECTION 70. (a) (1) Any patient or resident admitted to a state developmental center or state mental hospital pursuant to the provisions of § 33-5-101 or § 33-6-101 may be held under such restraint and given such standard treatment including surgery as may be necessary

for the welfare of the patient or resident in accordance with the terms of this chapter. However, such treatment and surgery may be performed on such patients or residents only if the consent of the patient or resident or the parent, guardian, legal custodian, spouse, or adult next of kin is first obtained.

(2) An order of hospitalization or admission entered pursuant to this chapter shall constitute the authority for the superintendent of a hospital or developmental center in which a patient or resident is hospitalized or admitted to give such standard treatment including surgery as may be necessary for the welfare of the patient or resident. However, such treatment and surgery may be performed on such patients and residents only if:

(A) The consent of the patient or resident or the parent, guardian, legal custodian, spouse, or adult next of kin is obtained; or

(B) If such treatment and surgery is necessary to the welfare and best interests of the patient and the procedures set out by authority rules are followed for administering treatment without consent.

(3) With regard to patients who are minors, nothing in this subsection shall authorize the administration of electroconvulsive therapy or other convulsive therapies, nor shall it authorize the performance of lobotomies or other surgical procedures for intervention or alteration of a mental, emotional or behavioral disorder in violation of § 33-3-201.

(b) In any admission proceeding under this chapter, where it appears that the person suffers from a physical disorder that requires immediate medical attention and which the developmental center, psychiatric hospital, or treatment resource cannot appropriately provide, the person first shall be taken to a physician or hospital for treatment of the medical condition. When the person has received appropriate medical attention and treatment, the person may then be transported to the appropriate facility for treatment of the person's mental condition.

SECTION 71. (a) (1) If any patient or resident hospitalized or admitted under court order escapes from a hospital or developmental center, after thirty (30) days' absence the

person shall be dropped from the records of the institution. If afterwards the person is taken into custody, the person may be returned to the institution without further court proceedings, upon an order by the court.

(2) If any patient or resident hospitalized or admitted under court order escapes, absconds or leaves a hospital or developmental center without the knowledge, permission or consent of the hospital or developmental center, the hospital or developmental center shall immediately verbally and subsequently in writing, notify the committing court.

(3) The committing court shall be notified of the policy regarding special and weekend passes and the court must be given an opportunity to register its objection to granting such passes.

(b) Any person who:

(1) Counsels, causes, influences, aids or assists any patient or resident to escape from any state hospital or developmental center for the mentally ill or mentally retarded in which the patient or resident has been hospitalized or admitted under court order, or shall attempt to do so;

(2) Harbors or conceals any patient or resident who has escaped therefrom;

(3) Incites any patient or resident, whether within the institution or elsewhere, to hurt or injure any person, or attempts to do so; or

(4) Without the permission of the superintendent, gives or sells to any patient or resident, whether on the premises of the institution or elsewhere, knowing such person to be a patient or resident, any firearms, intoxicating drinks, drugs or any other harmful articles;

commits a Class E felony.

(c) Any hospital or developmental center employee or official who receives from any patient or resident anything of value as a gift or for a consideration commits a Class C misdemeanor.

(d) Any person who aids or abets in the commission of any of the foregoing offenses, or aids or abets in a prohibited attempt, is guilty as if such person were a principal and shall be punished as a principal.

(e) Any person, not her husband, who has sexual intercourse with a female patient or resident of a state hospital or developmental center or with a female who has been ordered by a court to be hospitalized or admitted therein, knowing her to be a patient or resident or to have been ordered hospitalized or admitted, is guilty of a Class C felony.

SECTION 72. (a) Upon the death of a patient or resident hospitalized or admitted under court order in any institution under the supervision of the authority, the superintendent of the institution shall mail written notice of the death and the cause thereof to the court which entered the order of hospitalization or admission, and the time, place, and cause of death shall be entered in the records of the case. Such notice shall be mailed within ten (10) days of the death of the patient or resident.

(b) Notice of such death shall also be given promptly to the guardian, legal custodian, or next of kin of the individual. The administrator, executor or personal representative of the deceased person, or if there is none, one (1) or more of the heirs at law or next of kin, shall be notified by registered mail of any personal property owned by the deceased and left at the institution at the time of the deceased's death. Notice of an administrator, executor or personal representative shall be directed to the probate court of the county wherein that individual is qualified to administer the estate of the deceased. Notice to the next of kin or heirs at law shall be addressed to the last known address of such person or persons.

(c) The superintendent shall thereafter keep such personal property for twelve (12) months following the date of such notice or notices, at the expiration of which time, if it has not been claimed, the superintendent shall sell or otherwise dispose of the property, with the approval of the commissioner, and deposit the proceeds from such sale or disposition in a fund, maintained under the supervision of the superintendent for the purpose of providing needy

patients or residents in the institution with comforts and necessities they are unable to provide for themselves.

(d) If, after diligent search and inquiry, the name of none of the persons required to be notified in subsection (b) can be ascertained so that the required notice cannot be given, or the persons notified do not open the estate or otherwise proceed to dispose of the estate in a lawful manner, any property owned and left by any deceased patient or resident in the institution shall be kept for twelve (12) months after the death of the patient or resident and if unclaimed, be disposed of as provided in subsection (c) of this section.

(e) Upon the death of any patient or resident who was admitted voluntarily to any institution under the supervision of the authority, the superintendent of the institution shall dispose of the person's property under subsections (b)-(d) as if the person were admitted under a court order. The superintendent shall notify the next of kin of the cause of death, and the time, place, and cause of death shall be entered in the records of the case.

(f) When any patient or resident is released or discharged and leaves any personal property in the institution, the superintendent shall promptly notify such former patient or resident by registered mail addressed to that person's last known address of the fact that property belonging to that person has been left at the institution. Such property shall be kept for twelve (12) months from the date of the notice and if not claimed at the expiration of that time, disposed of as provided in subsection (c) of this section.

SECTION 73.

IF

(1) A certificate of need for commitment to care and treatment as a patient or resident is authorized or required to be made by a physician, psychologist, or other professional under this chapter, AND

(2) (A) It is made by such a professional who is the spouse, parent, grandparent, brother, sister, child, aunt, uncle, nephew, or niece of the individual who is the subject of the petition, application or certificate, OR

(B) It is made by a professional who has an ownership interest in a private facility in which the individual is to be detained,

THEN

(3) It shall not be considered under this chapter.

SECTION 74. (a) If a person is proposed to be committed to a private facility under this chapter, at least one (1) of the required certificates of need shall be from a professional who is not an employee of the private facility.

(b) For purposes of this section, employment as a faculty member by a school of medicine at a university or college associated with a hospital shall not constitute employment at a private facility.

SECTION 75. (a) A certificate of need for commitment to care and treatment as a patient or resident shall not be considered unless it is based on personal observation and examination of the individual made by such professional not more than three (3) days prior to the making of the certificate. Such certificate shall set forth in detail the facts and reasoning on which the opinions and conclusions are based.

(b) The execution of a certificate concerning the mental condition of an individual by a professional who has not personally observed and examined him is punishable as a violation of § 33-3-102(b).

SECTION 76. An admitting physician or the superintendent of the hospital or treatment resource shall orally inform a patient who is admitted for diagnosis, observation and treatment of a mental illness under the provisions of this section outlining in simple, non-technical language all rights accorded to patients or residents by this chapter. Such statement shall include those rights contained in § 33-3-104 as well as the right to release. In addition, if the patient is a minor,

such statement shall include those rights contained in § 33-3-201. Each such statement shall also be provided to the patient in writing at the time of admittance. The patient shall sign on the line provided for the signature, acknowledging that the patient has been verbally informed of the patient's rights. The patient's signature shall be acknowledged by at least one (1) disinterested witness. Such witness shall sign in the presence of the admitting physician or supervisor and the patient. Failure to so inform any patient is a Class A misdemeanor.

SECTION 77. (a) (1)

IF

(A) A person is an officer or employee of the authority; OR

(B) A person is an officer or employee of a licensee of the authority; AND

(C) The person or the person's spouse, parent, grandparent, brother, sister, or child has an ownership interest in a residential facility which is not publicly held or an ownership interest in a business which is not publicly held that owns or manages a residential facility that provides mental health or mental retardation services to persons; OR

(D) Any individual or combination of individuals named in subdivision (a)(1)(C), has an ownership interest of at least thirty-five percent (35%) in a residential facility which is publicly held that provides mental health or mental retardation services to persons; OR

(E) Any individual or combination of individuals named in subdivision (a)(1)(C), has an ownership interest of at least thirty-five percent (35%) in a business that is publicly held that owns or manages a residential facility that provides mental health or mental retardation services to persons;

(2) THEN

(A) The person must disclose the interest to the authority or licensee; AND

(B) The person may not serve in a capacity of decision making or influence or responsibility for the direct referral or placement of persons to any residential facility that provides mental health or mental retardation services.

(b) If a person violates subsection (a), the commissioner shall assess a civil penalty of one thousand five hundred dollars (\$1,500) per incident against such person for each violation. A penalty shall be assessed only after an informal hearing is held in the same manner as an informal hearing is held prior to the suspension of a license under § 4-5-322(d). If services to a recipient of mental health or mental retardation services have been provided in violation of this section, the commissioner may:

(1) Require transfer of the recipient of services to another provider of services as soon as is reasonably practical;

(2) Authorize the recipient of services to remain with the provider of services if the commissioner determines it to be in the best interests of the recipient of services to remain with the provider of services;

(3) Restrict the referral of other recipients of services to such provider of services; or

(4) Impose such sanctions listed in subdivisions (b)(1)-(4), above, in any combination or impose any other appropriate sanctions in the discretion of the commissioner.

(c) On March 22, 1996, any officer or employee who is not in conformity with subsection (a) shall conform to its terms. After March 22, 1996, any person to whom this section applies must disclose such information before being hired or as a part of a contract entered into with a provider of mental health or mental retardation services. Failure to disclose such information shall subject the person to removal from the position held and the contract to cancellation or renegotiation.

(d) If a person is relieved of such decision making authority or responsibility under this section, the personnel records of the officer or employee shall state that the officer or employee was relieved of such authority or responsibility solely to conform to this section.

SECTION 78. Tennessee Code Annotated, Section 33-3-202, is amended in subsection (a) by deleting the language "commissioner of mental health and mental retardation" and by

substituting instead the language "commissioner of the mental health and mental retardation authority".

SECTION 79. Tennessee Code Annotated, Section 33-3-202, is amended in subsection (a) by deleting the language "commissioner of mental health and mental retardation" and by substituting instead the language "commissioner of the mental health and mental retardation authority".

SECTION 80. Tennessee Code Annotated, Title 33, Chapter 3, is amended by deleting Part 3 in its entirety and by substituting instead Sections 81 through 83 as new Part 3.

SECTION 81. (a) The commissioner may authorize the transfer of a person who is lawfully in a facility of the authority to other authority facilities or to a private facility under this section. The commissioner shall give due consideration to the relationship of the person to family, guardian, and friends so as to maintain relationships and encourage visitation beneficial to the person. If a person whose transfer is authorized has been admitted or committed by court order, a certified copy of the court order shall be sent to the institution to which the person is transferred.

(b) (1) If the commissioner determines:

(A) That a person could more properly be cared for and treated in a facility other than the one in which such person is a resident or patient; and

(B) That the transfer is in the person's best interest,

the commissioner may authorize the person to be transferred for an indefinite period to another authority facility. The person may be transferred to a secure facility if and only if, in addition, the commissioner determines that the person is substantially likely to injure such person or others if not treated in a secure facility. Notwithstanding any other provisions of this section, any transfer to a developmental center authorized under this section shall not exceed forty-five (45) days unless such transfer complies with authority rules.

(2) Before such a transfer is authorized, the person shall be given a physical examination by a licensed physician and a mental assessment and evaluation by a qualified professional, and complete written reports of the examination, assessment, and evaluation shall be forwarded to the commissioner by the superintendent who recommends the transfer. The reports and the superintendent's recommendation shall each include a certification that the transfer is in the person's best interests and a statement of the reasons for the conclusion.

(3) The superintendent, upon recommending such a transfer, shall immediately give personal notice of the recommendation by telephone or otherwise to the person's spouse or parent or adult child and legal guardian, if any, and to the person. No person may be transferred less than twenty-four (24) hours after the notices required by this subdivision have been given, unless the person's spouse or parent or adult child or legal guardian, if any, have agreed to the transfer or unless a diligent attempt by the superintendent to give notice is unsuccessful.

(4) The commissioner, upon authorizing such a transfer, shall immediately give to the person's spouse or parent or adult child and legal guardian, if any, and to the person written notice of the decision and a complaint form for review of transfer in the circuit court under part 7 of this chapter. The person may then be transferred immediately.

(c) (1) If the commissioner determines, upon the recommendation of the superintendent who requests a transfer, (A) that a person requires emergency care and treatment that cannot be provided by the transferring facility and (B) that the transfer is in the person's best interest, the commissioner may authorize the person to be transferred immediately to another authority facility. The person may be transferred to a secure facility if and only if, in addition, the commissioner determines that the person is substantially likely to injure such person or others if not treated in a secure facility.

(2) If the commissioner approves the emergency transfer, the commissioner shall so notify the superintendents of the transferring and receiving facilities. The superintendent of the transferring facility shall then have the person transferred immediately.

(3) Within seventy-two (72) hours after the transfer, the superintendent of the receiving facility shall determine whether the transfer was appropriate. If the superintendent determines that the transfer was not appropriate, the superintendent shall return the person to the sending facility. If the superintendent determines that the transfer was appropriate, the superintendent shall immediately give the resident or patient written notice of such decision.

(4) Such a transfer shall not exceed thirty (30) days, at which time the superintendent shall return the person to the facility from which such person came.

(5) If the superintendent of the receiving facility determines that the person requires treatment beyond the thirty (30) day period, the superintendent shall so notify the person in writing and apply for indeterminate transfer under subsection (b). The person shall remain in the receiving facility unless the commissioner denies the application for transfer. If the commissioner denies the application, the superintendent of the receiving facility shall have the person transferred to the sending facility immediately.

(d) A person may be transferred from a state facility to a licensed private facility or from a licensed private facility to a state facility, upon proper application, approval of the sending and receiving facilities, and written notice to the committing court, if the person is committed. Once transferred, the person is lawfully admitted to the receiving facility, and such facility may retain the person under the authority of the admission or order applicable to the facility from which such person was transferred.

SECTION 82. Upon receipt of a certificate of the veterans' administration of the United States that facilities are available for the care or treatment of any individual heretofore ordered hospitalized pursuant to § 33-6-104 in any hospital for the care or treatment of the mentally ill and that such individual is eligible for care or treatment in a veterans' hospital or institution of such agency located in this state, the commissioner may cause his transfer to such veterans' hospital or institution of the United States for hospitalization in this state. No person shall be transferred to a veterans' hospital or institution of the United States if he is confined pursuant to

conviction of a criminal offense, or if he has been acquitted of the charge solely on the ground of mental illness unless prior to the transfer the court originally ordering confinement of such person enters an order for the transfer after appropriate motion and hearing. Any person transferred to a veterans' hospital or institution of the United States shall be considered to be hospitalized by the veterans' administration of the United States pursuant to the original order of hospitalization.

SECTION 83. (a) The commissioner is authorized to provide for and to authorize the transportation and transfer from Tennessee to their respective states of residence mental patients or residents who are residents of states not party to the Interstate Compact on Mental Health, if such nonparty states have reciprocal statutes conferring similar authority.

(b) (1) Subject to the availability of suitable accommodations, such nonresident patient or resident may be hospitalized or admitted under the provisions of this chapter for observation, diagnosis and treatment, but in no case for a period longer than thirty (30) days, pending his transfer to his state of residence.

(2) However, the commissioner may at his discretion, designate certain nonresident mentally ill patients or residents, not to exceed a total of one hundred (100), as "commissioner's patients or residents," such patients or residents to be persons who because of their nonresidency in Tennessee are not entitled to hospitalization or admission in this state, but who, having families residing in Tennessee, may be eligible for psychiatric hospitalization or admission, care and treatment for compassionate reasons.

SECTION 84. Tennessee Code Annotated, Title 33, Chapter 3, is amended by deleting Part 4 in its entirety and by substituting instead Sections 85 through XX as new Part 4.

SECTION 85. (a) If the superintendent of a youth development center of the authority of children's services determines, on the basis of a written report of a licensed physician or licensed psychologist designated as a health service provider, that a minor in that youth development center is:

(1) Mentally ill or mentally retarded; and

(2) In need of residential care and treatment for that condition which cannot be provided by the authority of children's services and which can be provided at a residential facility of the authority; the superintendent of the youth development center shall order the minor's transfer and shall notify the person of the decision and the reason therefor in writing not less than twenty-four (24) hours in advance of the proposed transfer.

(b) (1) If the person does not object to the transfer within twenty-four (24) hours of the notification of the proposed transfer, the person shall be transferred to the appropriate residential program of the authority which is designated by the commissioner as having available suitable accommodations. The authority of children's services shall retain legal custody of the minor after the minor has been transferred to an appropriate residential program of the authority.

(2) If the person does object to the transfer within twenty-four (24) hours of the notification of the proposed transfer, the superintendent of the youth development center shall convene a transfer committee not less than seven (7) nor more than fourteen (14) days thereafter, and the person shall remain in the youth development center pending the decision of the transfer committee.

SECTION 86. (a) If the director of an institution of the authority of correction determines, on the basis of a written report of a licensed physician or a licensed clinical psychologist, that an adult in the director's custody is:

(1) Mentally ill or mentally retarded; and

(2) In need of residential care and treatment for that condition which cannot be provided at an appropriate institution of the authority of correction and which can be provided at an appropriate residential program of the authority;

the director shall order the person's transfer and shall notify the person of the decision and the reasons therefor in writing not less than twenty-four (24) hours in advance of the proposed transfer.

(b) (1) If the person is competent and waives in writing the right to a transfer hearing, such person shall be transferred to the custody of the commissioner at a secure facility which is designated by the commissioner as having available suitable accommodations.

(2) If the person does not so waive the right to a hearing, the director shall convene a transfer committee not less than seven (7) nor more than fourteen (14) days thereafter, and the person shall remain in the institution of the authority of correction pending the decision of the transfer committee.

SECTION 87. (a) If the director of an institution of the authority of correction determines, on the basis of a written report of a licensed physician or a licensed psychologist designated as a health service provider, that a person in the director's custody is:

(1) Mentally ill; and

(2) In need of emergency residential care and treatment for that condition which cannot be provided at an appropriate institution of the authority of correction and which can be provided at an appropriate residential program of the authority;

the director shall immediately have the person transferred to the custody of the commissioner at a facility designated by the commissioner.

(b) When a person is transferred from the authority of correction to the authority under this section, the superintendent of the receiving facility shall convene a transfer committee not less than seven (7) nor more than fourteen (14) days thereafter unless the person is returned to the authority of correction before the scheduled hearing date.

SECTION 88. A transfer committee consists of five (5) persons. If the person to be transferred is a child, as that term is defined in § 37-1-102, then the commissioner of children's services shall appoint two (2) members of the committee, neither of whom may be the

transferring superintendent. If the person to be transferred is an adult, then the commissioner of correction shall appoint two (2) members of the committee, neither of whom may be the transferring director. The commissioner shall appoint three (3) members to review transfers of adults and two (2) members to review transfers of minors. The executive director of the Tennessee children's services commission or the director's designee shall be a member of a transfer committee which reviews transfers of minors. The committee members shall serve at the pleasure of the appointing commissioners. The commissioners may appoint alternate committee members.

SECTION 89. (a) The committee may elect a chair and a vice chair. The committee shall act by majority vote. No member of the committee is disqualified to participate in a hearing by virtue of prior knowledge of the case. The chair may postpone the hearing for a reasonable time upon request of the person whose transfer is proposed to permit that person to obtain counsel and witnesses. In the hearing, the committee shall receive all relevant evidence. The transferee shall be permitted to speak on such person's own behalf and by counsel and to present witnesses.

(b) Transfer committee proceedings under this part are not governed by the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 90. (a) If the committee determines that the transfer meets the standards for a transfer under this part, it shall approve the transfer. The chair shall immediately give the person written notice of the committee's decision and a summary of the factual basis for the decision and a complaint form for review of the transfer in the circuit court under part 7 of this chapter.

(b) If the transfer committee determines that the transfer does not meet the standards for a transfer under this part, it shall disapprove the transfer, and if the person has already been transferred, shall order the person returned to the transferring facility. The chair shall

immediately give the person written notice of the committee's decision and a summary of the factual basis for the decision.

SECTION 91. The person shall be transferred five (5) days after the receipt of the committee's notice if such person has not filed a complaint under part 7 of this chapter. The person may be transferred immediately after receipt of the notice if such person is competent and consents in writing to the transfer.

SECTION 92. (a) Within five (5) days, excluding Saturdays, Sundays, and legal holidays, after any transfer made without objection by the transferee under § 33-3-401 or § 33-3-402, or any transfer under § 33-3-403, the superintendent of the receiving facility of the authority shall determine whether the transfer was appropriate under this part. If the transfer was based on mental illness, the superintendent's decision shall be based on the advice of a licensed physician. If the transfer was based on mental retardation, the superintendent's decision shall be based on the advice of a licensed physician or a licensed clinical psychologist.

(b) (1) If the superintendent determines that the transfer of an adult inmate was not appropriate, the superintendent shall immediately transfer the person back to the custody of the authority of correction.

(2) If the superintendent of the receiving authority facility determines that the transfer of a minor offender was not appropriate, the superintendent shall immediately transfer the minor back to the youth development center or other appropriate program as designated by the commissioner of children's services.

(3) If the superintendent determines that the transfer was appropriate, the superintendent shall immediately give the person written notice of the decision.

SECTION 93. (a) If the superintendent of a receiving facility of the authority or, upon approval by the commissioner of the authority, the superintendent of a private facility which operates a program of the authority determines more than five (5) days, excluding Saturdays, Sundays, and legal holidays, after a person has been transferred that a person no longer meets

the standards for a transfer under this part or that residential care and treatment in the facility is no longer advisable or beneficial, the superintendent shall order the person's return to the authority of correction or the authority of children's services.

(b) The superintendent shall notify the person of the decision in writing not less than seventy-two (72) hours in advance of the proposed transfer. If the person does not object within seventy-two (72) hours of the notice to the proposed return, the person shall be returned to the department of correction or the department of children's services. If the person objects within seventy-two (72) hours of the notice, the superintendent shall convene a transfer committee to review the decision not less than seven (7) days nor more than fourteen (14) days thereafter. The person shall remain at the facility pending the decision of the transfer committee.

(c) If the transfer committee determines that the person no longer meets the standards for a transfer under this part or that residential care and treatment in the facility is no longer advisable or beneficial, it shall approve the transfer.

(d) The decision of a transfer committee approving or disapproving a transfer under this section is final. The judicial remedy and procedures under part 7 of this chapter do not apply to the transfer committee decision.

SECTION 94. (a) If the superintendent of a private facility which operates a program of the authority determines that residential care and treatment of a transferee in the facility is no longer advisable or beneficial, the superintendent shall notify the transferee and the commissioner of the authority of the determination and of the basis for it.

(b) If the commissioner, after receipt of the notice, determines that an emergency exists and that the determination appears to be correct, the commissioner shall order the transfer immediately to a facility of the authority. Within seven (7) days after the transfer, the commissioner shall have a transfer committee composed only of three (3) persons appointed by the commissioner hold a hearing to determine whether residential care and treatment of a transferee in the transferring facility is no longer advisable or beneficial. If the committee

determines that the superintendent was correct, it shall approve the transfer. Otherwise, the committee shall order the person returned to the transferring facility or to another appropriate facility.

(c) If the commissioner, after receipt of the notice, determines that an emergency does not exist and that the determination appears to be correct, the commissioner shall have a transfer committee composed only of three (3) persons appointed by the commissioner hold a hearing not less than seven (7) nor more than fourteen (14) days after receipt of the notice to determine whether residential care and treatment of a transferee in the transferring facility is no longer advisable or beneficial. If the committee determines that the superintendent was correct, it shall approve the transfer. Otherwise, the committee shall disapprove the transfer. The person shall remain in the transferring facility until the committee has made its determination.

SECTION 95. (a) If an adult transferee runs away from an institution of the authority or a program of the authority which is operated by a private contractor for the authority and is taken into custody within thirty (30) days after running away, the transferee shall be returned to the custody of the commissioner at a facility designated by the commissioner. If an adult transferee runs away from such an institution or program and is taken into custody more than thirty (30) days after running away, the transferee shall be returned to the custody of the commissioner of correction at a facility of the department of correction designated by the commissioner of correction.

(b) If a minor transferee runs away from an institution of the authority or a program of the authority which is operated by a private contractor for the authority and is taken into custody within thirty (30) days after running away, the transferee shall be returned to a facility designated by the commissioner. If a minor transferee runs away from such an institution or program and is taken into custody more than thirty (30) days after running away, the transferee shall be returned to the youth development center or other appropriate program as designated by the commissioner of children's services.

SECTION 96. (a) If the superintendent of a youth development center of the department of children's services determines, on the basis of a written report of a licensed physician or a licensed psychologist designated as a health service provider, that a minor in that youth development center is:

(1) Mentally ill; and

(2) In need of emergency residential care and treatment for that condition which cannot be provided at the youth development center and which can be provided by an appropriate residential program of the authority; the superintendent of the youth development center shall immediately have the minor transferred to a facility of the authority designated by the commissioner of the mental health authority.

(b) When a minor in the custody of the department of children's services is transferred to a facility of the authority under this section, the superintendent of the receiving facility shall convene a transfer committee not less than seven (7) nor more than fourteen (14) days thereafter, unless the person is returned to the youth development center or other appropriate program of the department of children's services before the scheduled hearing date.

SECTION 97. Tennessee Code Annotated, Section 33-3-502, is amended in subsection (b)(2) by deleting the language "commissioner of mental health and mental retardation" and by substituting instead the language "commissioner of mental health and mental retardation authority".

SECTION 98. Tennessee Code Annotated, Section 33-3-502, is further amended in subsection (b)(3) by deleting the language "department of mental health and mental retardation" and by substituting instead the language "mental health and mental retardation authority".

SECTION 99. Tennessee Code Annotated, Section 33-3-503, is amended in subsection (b) by deleting the word "department" and by substituting instead the word "authority".

SECTION 100. Tennessee Code Annotated, Section 33-3-503, is amended in subsection (e) by deleting the word "department" and by substituting instead the word "authority".

SECTION 101. Tennessee Code Annotated, Section 33-3-605, is amended in the third sentence by deleting the language "department of mental health and mental retardation" and by substituting instead the language "mental health and mental retardation authority".

SECTION 102. Tennessee Code Annotated, Section 33-3-903, is amended by deleting the word "department" and by substituting instead the word "authority".

SECTION 103. Tennessee Code Annotated, Section 33-3-904, is amended in subsection (a) by deleting the word "department" and by substituting instead the word "authority".

SECTION 104. Tennessee Code Annotated, Section 33-3-906, is amended in subsection (a) by deleting the word "department" and by substituting instead the word "authority".

SECTION 105. Tennessee Code Annotated, Section 33-4-101, is amended in subsection (a) by deleting the word "department" and by substituting instead the word "authority".

SECTION 106. Tennessee Code Annotated, Section 33-4-103, is amended by deleting the word "department" wherever it may be found and by substituting instead the word "authority".

SECTION 107. Tennessee Code Annotated, Section 33-4-105, is amended by deleting the word "department" wherever it may be found and by substituting instead the word "authority".

SECTION 108. Tennessee Code Annotated, Section 33-4-107, is amended in subsection (a) by deleting the word "department" and by substituting instead the word "authority".

SECTION 109. Tennessee Code Annotated, Section 33-4-108, is amended by deleting the word "department" wherever it may be found and by substituting instead the word "authority".

SECTION 110. Tennessee Code Annotated, Section 33-4-109, is amended by deleting the word "department" wherever it may be found and by substituting instead the word "authority".

SECTION 111. Tennessee Code Annotated, Section 33-4-111, is amended by deleting the word "department" and by substituting instead the word "authority".

SECTION 112. Tennessee Code Annotated, Section 33-4-112, is amended in subsection (a) by deleting the word "department" wherever it may be found and by substituting instead the word "authority".

SECTION 113. Tennessee Code Annotated, Section 33-5-101, is amended in the first sentence of subsection (a) by deleting the word "department" and by substituting instead the word "authority".

SECTION 114. Tennessee Code Annotated, Section 33-5-101(b)(1)(B)(ii), is amended by deleting the word "department" and by substituting instead the word "authority".

SECTION 115. Tennessee Code Annotated, Section 33-5-101(b)(3), is amended by deleting the language "departmental regulations" and by substituting instead the language "regulations of the authority".

SECTION 116. Tennessee Code Annotated, Section 33-5-101(b)(4), is amended by deleting the language "departmental regulations" and by substituting instead the language "regulations of the authority".

SECTION 117. Tennessee Code Annotated, Section 33-5-105(a), is amended by deleting the language "department of mental health and mental retardation" and by substituting instead the language "mental health and mental retardation authority".

SECTION 118. Tennessee Code Annotated, Section 33-5-105(a), is further amended by deleting the language "department" and by substituting instead the word "authority".

SECTION 119. Tennessee Code Annotated, Section 33-5-305(a)(3), is amended by deleting the language "department facility" and by substituting instead the language "facility of the authority".

SECTION 120. Tennessee Code Annotated, Section 33-5-305(c)(6), is amended by deleting the language "department of mental health and mental retardation" and by substituting instead the language "mental health and mental retardation authority".

SECTION 121. Tennessee Code Annotated, Section 33-5-305(c)(6), is further amended by deleting the language "department facility" and by substituting instead the language "facility of the authority".

SECTION 122. Tennessee Code Annotated, Section 33-10-301(1), is amended by deleting the language "department of mental health and mental retardation" and by substituting instead the language "mental health and mental retardation authority".

SECTION 123. Recognizing the years of faithful and dedicated service to the state of Tennessee by the employees of the department of mental health and mental retardation, it is the intention of the general assembly that those employees who serve in jobs that would be classified as career service as defined in Tennessee Code Annotated, Section 8-30-208, receive the benefits and protection of career service status upon passage of this act without further examination or competition; provided, that such employees must have completed at least six (6) months of service with the department of mental health and mental retardation upon the effective date of this act.

SECTION 124. As sections, parts, titles, chapters and volumes of Tennessee Code Annotated are amended, repealed, revised and replaced, the Tennessee code commission is directed to change references to the department of mental health and mental retardation to the mental health and mental retardation authority. After the effective date of this act, any reference

to the department of mental health and mental retardation shall be deemed to be a reference to the mental health and mental retardation authority.

SECTION 125. All funds presently received by the department of mental health and mental retardation from TennCare, including TennCare Partners, shall be transferred to the mental health and mental retardation authority.

SECTION 126. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 127. This act shall take effect July 1, 1998, the public welfare requiring it.